

RESOLUTION NO. 2020-03

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT ON BEHALF OF THE CITY OF LADUE, MISSOURI WITH SBC CONTRACTING, INC. FOR CLAYTON ROAD ADA SIDEWALK IMPROVEMENTS PHASE 2 FROM WARSON TO WEST OF FIELDCREST

WHEREAS, On January 21, 2020, the City of Ladue sent out a bid solicitation for the Clayton Road ADA Sidewalk Improvements Phase 2 project from Warson to west of Fieldcrest in accordance with the bid documents and specifications ("Project"); and

WHEREAS, staff reviewed the bid submittals obtained on February 11, 2020, and after evaluation of the same in accordance with the City's competitive bidding requirements, found that SBC Contracting Inc. submitted the lowest and best bid that met the City's needs; and

WHEREAS, the City contracted with Oates Associates, an engineering consultant, in 2017 to assist with development of an ADA Self-Evaluation and Transition Plan which was approved by City Council by resolution on March 26, 2018; and

WHEREAS, the City previously identified the highest priority areas which will be implemented by phases with ADA improvements on Clayton Road being of the highest priority; and

WHEREAS, the City Council now desires and finds it in the best interest of the City to enter into a contract with SBC Contracting, Inc. for the Project as the lowest and best bidder.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF LADUE, MISSOURI, AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute on behalf of the City a contract with SBC Contracting, Inc. to construct the Clayton Road ADA improvements Phase 2 project in substantially the form of Exhibit A incorporated herein by reference (the "Contract"), including all documents specified in the Contract as being part of the Contract Documents.

Section 2. The requirements of Section 292.675 RSMo., and the OSHA requirements, penalties, and obligations in the Contract, are hereby incorporated herein by reference and made a part of this Resolution for all purposes.

Section 3. The requirements of Section 290.210 RSMo., and the prevailing wage requirements and obligations in the Contract, are hereby incorporated herein by reference and made a part of this Resolution for all purposes. Additionally, a copy of Annual Wage Order for St. Louis County No. 26, being the applicable prevailing wage order for the Project, is part of the Contract Documents and incorporated herein by reference.

Section 4. This Resolution shall take effect and be in force from and after its passage and approval by the Mayor.

Adopted by the City Council and approved by the Mayor on this ____ day of _____ 2020.

Nancy Spewak, Mayor

ATTEST:

Laura Rider, City Clerk

Exhibit A

CONTRACT AGREEMENT

This agreement, made this _____ day of _____ in the year Two Thousand _____ by and between _____, hereinafter called the contractor, and the City of Ladue, Missouri, hereinafter called the City.

Now therefore, the contractor and the City, for consideration of the amount of _____, agree as follows:

ARTICLE 1. SCOPE OF THE WORK:

The contractor shall furnish all of the tools, equipment, labor and everything else necessary to perform, and shall perform in accordance with the specifications and terms of this contract. The work includes all work and materials necessary for the work as described in the plans and specifications for the **Clayton Road ADA Improvements Phase 2**.

ARTICLE 2. TIME OF COMPLETION:

The Notice of Award is anticipated to be issued on February 18, 2020. The Notice to Proceed is anticipated to be issued on March 4, 2020. The contractor shall fully complete all work under this contract within 90 calendar days from Notice to Proceed. The rate of progress and the time of completion being essential conditions of this contract.

The Contractor agrees and acknowledges that time is of the essence of this Agreement and that delay in the prosecution of the Work and the Project will inconvenience the public and increase administrative costs of the City, the costs of which the Contractor and the City are incapable of ascertaining at this time. Should the Contractor, or in the case of Contractor's default, the surety, fail to complete the Work within the time stipulated in this Agreement, or within such extension of time as may be allowed by the City in the manner set forth in the Contract Documents, the Contractor (or surety, as applicable) shall pay to the City as liquidated damages, and not as a penalty, the sum of two hundred and fifty dollars (\$250.00) for each calendar day that the Work remains uncompleted after the time allowed for the completion, including approved extensions. In the sole discretion of the City, the amount of the liquidated damages may be deducted from any money due the Contractor under this Agreement. Permitting the Contractor to finish the Work or any part thereof after the expiration of the time for completion or any approved extension, shall in no way operate as a waiver of the City of any of rights under this Agreement.

ARTICLE 3. PAY QUANTITIES AND UNIT PRICES:

The City shall pay the contractor for all work done on the basis of final computations for all work acceptably completed according to this contract, at the unit price shown in the proposal for the quantity actually installed. The successful bidder will be responsible to check all quantities for this work before starting. Questions regarding quantities will not be entertained after work has begun.

ARTICLE 4. FINAL PAYMENT AND ACCEPTANCE:

When all work provided for under this contract has been completed in conformance with the specifications and requirements of this contract, and accepted without regard to the provisions of guarantee as provided under the terms of this contract, a final cost estimate shall be prepared by the Contractor and approved by the City Director of Public Works and filed with the City and with the contractor within fifteen (15) days after the date of acceptance of the work as a statement of the amount due the contractor. This estimate shall include any charges for extra work ordered and properly chargeable under this contract, and deducting any sum properly deductible under this contract.

ARTICLE 5. THE CONTRACT DOCUMENTS:

The Advertisement for Bids, Project Manual including Bonds, Certifications, General Conditions & Specifications, Wage Rates, and Bid Proposal, together with this Agreement form the Contract.

ARTICLE 6. RATES OF PAY:

The Contractor hereby agrees that the prevailing rates of pay as determined by the Department of Labor and Industrial Relations of the State of Missouri shall be paid to skilled and unskilled labor employed under the terms of this contract. A copy of the applicable Wage Order and incremental Increases for each occupational title required under this Project is included in the Project Manual. The contractor shall forfeit to the City one hundred (100) dollars of each workman employed, for each calendar day, or portion thereof, such workman is paid less than the said stipulation rates for any work under said contract, by him or by any subcontractor under him.

ARTICLE 7. SUPERVISION:

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract regardless by whom such is performed, unless Contract Documents give other specific instructions concerning those matters. Work consists of the work as described in the Project Manual.

ARTICLE 8. SAFETY:

The City of Ladue, and the City of Ladue's Representative may have personnel on the project site from time to time. All information and/or instructions shall be requested in writing by the Contractor and responded to in writing. No opinion or instructions will be given to the Contractor on safety.

The Contractor shall be solely responsible for the safety on and around the project site, including but not limited to, excavation, shoring, ladders, drop cords, scaffolding, barricades, construction means, methods, techniques, sequences and procedures.

ARTICLE 9. INDEMNITY:

To the fullest extent permitted by law, the Contractor agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suit, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or money damages, or trespass, or any other circumstances, sustained by the City or others, arising from the Contractor's breach of the Contract or out of services or products provided by the Contractor or its subcontractors under the terms of this Contract. The Contractor shall not be liable for any loss or damage attributable solely to the negligence of the City. To the extent required to enforce this provision, the Contractor agrees that this indemnification requires the Contractor to obtain insurance in amounts specified in the Contract Documents and that the Contractor has had the opportunity to recover the costs of such insurance in the compensation set forth in this Agreement.

In any and all claims against the City or any of its agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10. ATTORNEY FEES' AND COSTS:

The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement.

ARTICLE 11. ONE YEAR CORRECTION PERIOD:

The Contractor expressly guarantees the aforesaid Work as to workmanship and quality of materials used in connection herewith for a term of one (1) year, commencing on the date of final acceptance by the City, and binds itself, its successors or assigns, to make all repairs or replacements which may become necessary within said period due to construction defects and nonconformity with the Contract Documents. Upon expiration of the one (1) year correction period, the City shall release the Performance and Maintenance Bond, less any amounts reasonably necessary to remedy any of the Contractor's performance and/or maintenance obligations under this Agreement that may still be outstanding at the time. Contractor's general warranty obligations required by the General Conditions and the one-year correction period as required herein, as well as any other obligation to provide surety or a bond, are each an independent and separate obligation of Contractor. The release or expiration of any guaranty, or any other surety or bond provided for in this Agreement shall not release, or be claimed to release, the obligation to complete the Work according to all warranties, specifications, and requirements expressed or implied by this Agreement or required by applicable law.

ARTICLE 12. TAXES:

The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.

ARTICLE 13. OTHER REPRESENTATIONS, WARRANTIES AND OTHER COVENANTS BY THE CONTRACTOR:

The Contractor represents and warrants that the Contractor has been engaged in such Work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor owns sufficient equipment and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City.

ARTICLE 14. AMENDMENT; WAIVER:

No amendment, modification or waiver of any provision of this Agreement shall be effective unless in a writing signed by an authorized representative of the party against whom such provision as amended or modified or such waiver is sought to be enforced. Failure to insist upon strict compliance with any of the terms or conditions of the Agreement shall not be deemed a waiver of such term or condition.

ARTICLE 15. CHOICE OF LAW:

This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws.

ARTICLE 16. SEVERABILITY:

The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision of this Agreement, which shall remain in full force and effect to the maximum extent permitted by law.

ARTICLE 17. COUNTERPARTS:

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

ARTICLE 18. INDEPENDENT CONTRACTOR:

The Contractor shall be and operate as an independent Contractor in the performance of this Contract. General Contractor shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Contractor shall be employees of said Contractor and not employees of the City in any respect. The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all

construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work.

ARTICLE 19. PAYMENT BOND:

If the Contract Sum is in excess of \$50,000 or if required on the Notice of Award, the Contractor shall furnish within five (5) days of notification of contract award a satisfactory Payment Bond in the full amount of the Contract Sum. The Payment Bond furnished shall meet all requirements of Section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the payment of any and all materials, incorporated, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, said work, and for all labor performed in such work whether by subcontractor or otherwise, including payment of prevailing wage requirements of the State of Missouri. The submitted Payment Bond shall be substantially in the form of the "Form of Payment Bond" included within the Bid Documents.

ARTICLE 20. PERFORMANCE AND MAINTENANCE BOND:

The Contractor shall also furnish within five (5) days of notification of contract award a satisfactory Performance and Maintenance Bond in the full amount of the Bid based on the bid quantities listed on the Bid Proposal form. The Performance and Maintenance Bond furnished shall guarantee the faithful performance of the Work and warrant the Work for the guaranty period established in this City-Contractor Agreement. The submitted Performance and Maintenance Bond shall be substantially in the form of the "Form of Performance and Maintenance Bond" included within the Bid Documents.

ARTICLE 21. REQUIRED OSHA TRAINING:

Pursuant to Section 292.675 RSMo., Contractor shall require all on-site employees to complete the ten-hour training program as required under Subsection 292.675.2 RSMo. This program shall be provided by Contractor and shall be a ten-hour Occupational Safety and Health Administration ("OSHA") construction safety program for Contractor's on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations ("MoDOLIR") which is at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty days of beginning work under this Agreement. Contractor shall further require all subcontractors under Contractor to provide the ten-hour training program required under Subsection 292.675.2 RSMo. to such subcontractors' on-site employees. On-site employees who have previously completed such ten-hour training program must hold documentation of prior completion of the program.

Notice is hereby given to Contractor that it shall be subject to the penalties set forth in Subsection 292.675.4 RSMo. and such penalties shall be forfeited to the City pursuant to such Subsection. MoDOLIR shall investigate any claim of violation of Section 292.675 RSMo. Upon City's receipt of notification from MoDOLIR of violations of 292.675 by Contractor and a determination by MoDOLIR that penalties shall be assessed for such violations, the City shall withhold and retain from the contract all sums and amounts due and owing to the City as a result of any violation of Section 292.675 RSMo. All words in this paragraph shall have the definitions as provided in Section 292.675.1 RSMo.

ARTICLE 22. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAW:

The Contractor shall comply with all applicable federal, (including specifically Title VI of the Civil Rights Act of 1964), state and local law requirements for performance under this Agreement. Contractor shall comply with Section 34.353 RSMo. to the extent applicable to this Agreement. The Contractor shall abide by all health and environmental requirements imposed by law in performance of its duties.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed in three (3) original counterparts as of the day and year first above written.

CONTRACTOR _____
Company Name

BY _____
President

Secretary

CITY OF LADUE, MISSOURI

BY _____

ATTEST _____
City Clerk